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8
9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**
11

12	FRED HULAC, KATHY FINGARSON,)	
	DAVID WILLIAMS, RAUL)	CASE NO. 08-01557 JSW
13	ARMENDARIZ, GLENDORA SPINKS,)	
	WILLIAM STEWART and all)	
14	those similarly situated)	AMENDED COMPLAINT
)	
15)	DEMAND FOR JURY TRIAL
)	
16	Plaintiffs,)	
)	
17)	ADEA COLLECTIVE ACTION ERISA AND
)	
18	vs.)	CLASS ACTION UNDER THE FEHA
19)	
)	
20	FEDERAL EXPRESS)	
	CORPORATION)	
21)	
)	
22	Defendant.)	
)	

23 **INTRODUCTION**

24
25 1. Plaintiffs are ninety-six current and former hourly
26 employees of Defendant Federal Express Corporation ("Fed Ex") who
27 bring this collective action to enforce and secure their rights
28 and the rights of other similarly situated older employees under

1 the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. §
2 621, et seq., the Employee Retirement Income and Security Act
3 ("ERISA") and the California Fair Employment and Housing Act,
4 Cal. Gov't. Code §12940, et seq. 29 U.S.C. 1140 Plaintiffs seek an
5 injunction for relief from Fed Ex's conduct that has had
6 disparate impact against older workers and defendant's practice
7 of treating older workers less favorably than younger ones and
8 correcting the effects of past discriminatory conduct.

9 Plaintiffs further seek to be made whole for the harm they have
10 suffered from disparate impact and disparate treatment by Fed Ex.

11 2. Plaintiffs allege in the alternative that Fed Ex took
12 adverse employment actions against them and other, similarly
13 situated hourly employees for the purpose of interfering with
14 ERISA rights to which such employees were entitled or may have
15 become entitled, in violation of ERISA 29 U.S.C. 1140, or that
16 defendant acted with a mixed age and benefits discrimination
17 motive.

18 3. The plaintiffs listed on Appendix C are California
19 residents and seek to represent a class of employees employed by
20 Fed Ex in California who have been victims of Fed Ex's age
21 discrimination in violation of Cal. Gvt. Code §12940.

22 JURISDICTION

23 4. This Court has jurisdiction over this case under 29
24 U.S.C. § 626(c), 29 U.S.C. 1140 and 28 U.S.C. § 1331, § 1337 and
25 § 1367.

26 VENUE

5 6. Defendant Federal Express Corporation ("Fed Ex" or
6 "Defendant") is a corporation engaged in the transportation of
7 packages by air and by ground throughout the United States.

13. Plaintiffs who are currently employed with Fed Ex are listed on Appendix B.

1 14. Fed Ex discriminates against the Plaintiffs employed by
2 Fed Ex listed on Appendix B through Fed Ex policies. Fed Ex
3 wants these employees to become so frustrated they quit. If they
4 do not quit they will be fired, harassed or forced to retire
5 early.

6 15. The Plaintiffs in Appendix B are still employed by Fed
7 Ex. They seek an injunction for relief from Fed Ex's
8 discriminatory practices as well as and seek make whole at other
9 appropriate

10 16. Nine of the employees listed in Appendix A reasonably
11 believed Fed Ex would be likely to terminate them if they did not
12 accept early retirement. None of these couriers reached 60 years
13 of age with twenty five or more years of experience with Fed Ex.
14 Retiring before reaching 60 years of age and twenty five years or
15 before 25 years of service of employment has a negative impact on
16 these couriers, monthly pension payment.

17 **FACTS**

18 17. Defendant operates a package delivery service which
19 transports packages throughout the United States, many on an
20 overnight schedule.

21 18. Defendant has, at all relevant times, employed over
22 40,000 hourly employees in the United State in positions
23 including: couriers, service agents, operations managers and ramp
24 transport drivers(RTD's).

25 19. Defendant employed over 31,000 full time couriers in
26 2006.

1 26. Couriers pick up packages, drive delivery vehicles,
2 deliver packages to pick-up points, sort packages for delivery,
3 deliver packages and some pick-up packages during the afternoon.

4 27. Typically, full time couriers are assigned to a regular
5 route to service customers, drop points and destinations as the
6 day's volume dictates.

7 28. Part-time couriers have similar responsibilities as
8 permanent full-time couriers. They must deliver packages and
9 some pick-up packages.

10 29. Service agents assist couriers with administrative
11 activities, operations managers oversee couriers for the senior
12 manager and ramp transport drivers deliver bulk packages to
13 stations and to customers.

14 30. Each station is managed by a manager ("station
15 manager") who plays a role in hiring, rating, assigning routes
16 and other duties, disciplining and firing hourly personnel
17 assigned to that station. In larger stations, several operations
18 managers and subordinate managers may assist with the management
19 of personnel and equipment at the station.

20 31. Station managers do not have the final authority to
21 hire or fire hourly workers. Senior Vice Presidents and Fed Ex
22 located at headquarters, in Memphis, TN must approve for hiring
23 and firing recommendations from station managers.

24 32. Managers must follow Fed Ex corporate policies
25 developed at headquarters by applying Management by
26 Objectives/Performance by Objectives ("MOB/POB") and similar
27
28

1 strategies.

2 33. Fed Ex maintains uniform corporate policies for hourly
3 workers that cover all aspects of job performance from uniforms
4 and grooming through procedures for tracking pick-ups and
5 deliveries. Such policies are published in handbooks, memos and
6 training initiatives including the "People Manual" for all
7 employees and "Best Practices" (BP) for couriers, service agents,
8 ramp transport drivers and managers. Couriers and other hourly
9 employees are obliged to go through training for several weeks.

10 34. Fed Ex provides training to managers for several weeks
11 at its headquarters in Memphis and application of its policies in
12 stations across the country.

13 35. Fed Ex sets periodic budget and performance goals for
14 each station. Performance goals include such factors as on time
15 deliveries, retaining and adding customers, reducing costs and
16 reducing the ratio of hours worked to packages delivered by
17 increasing stops per hour.

18 36. Station managers have regular access to data regarding
19 station performance against the goals set by Fed Ex. Station
20 managers are also provided with reports at least once per month
21 on station progress in achieving specific goals and specific
22 factors that have contributed to problems in achieving those
23 goals.

24 37. Fed Ex sets specific stops per hour goals for each
25 station and for each route within each station and provides
26 periodic reports to station managers indicating the routes and
27

1 the individuals assigned to those routes where the stops per hour
2 goals are not met.

3 38. Fed Ex policy and practice requires station managers to
4 provide disciplinary counseling in the On Line
5 Counseling/Compliment (OLCC) area of the PRISM election system
6 for those couriers who are identified as having failed to meet
7 stops per hour goals and to follow through with performance
8 improvement plans and termination if the courier is repeatedly
9 identified as failing to meet his goals.

10 39. Fed Ex has increased the delivery goals, including
11 stops per hour for many couriers over 44 years of age, to levels
12 that cannot be achieved without violating company policies about
13 safe driving, delivery priorities and/or policies against working
14 during lunch breaks or off the clock.

15 40. Manager Hines of the stations in New Jersey, like other
16 managers, receives the stops per hour report and goals from an
17 industrial engineer, who receives them from Headquarters in
18 Memphis. The increase in Plaintiff Notarfrancesco's stops per
19 hour is an example of how older couriers are targeted for
20 termination with headquarters sanctioning these increases.

21 41. Fed Ex provides specific budgets to each station for
22 labor costs and, on information and belief, provides managers
23 with information on the specific costs of each courier's hours,
24 which include benefits costs.

25 42. On information and belief, Fed Ex considers the
26 specific cost per hour of each courier in designing and
27
28

1 implementing station and route specific performance and budget
2 goals.

3 43. Performance Improvement Policy 2-50 provides that
4 employees must be advised, upon a second performance deficiency
5 notice (whether a reminder or a warning), that termination can
6 occur with a third notice. A third notice triggers a notice to
7 management to audit the employee's job history to determine
8 whether termination is warranted.

9 44. Acceptable Conduct Policy 2-5 is published in the Fed
10 Ex People Manual. It gives station managers broad discretion to
11 discipline and fire couriers and other hourly employees if
12 disciplined three or more times for a variety of reasons.

13 45. Under Fed Ex policy, 2-5, a manager who provides notice
14 of a deficiency to an employee is instructed to enter the
15 counseling into the On-line documented Compliment/Counseling
16 ("OLCC") component of the PRISM system. That system makes
17 entries available to other managers and headquarters personnel.

18 46. Under policy 2-5, three notifications of deficiency
19 within a twelve month period trigger an audit of the employee's
20 employment history, which usually results in termination.

21 47. Managers are trained by headquarters in BP methods and
22 related practices. Managers periodically ride along with
23 couriers on a "Check Ride" or otherwise monitor to determine the
24 number of packages a courier's route should deliver per hour, or
25 what the courier's "stops-per-hour" should be.

26 48. Managers have adjusted stops-per-hour on some older
27
28

1 couriers' routes based on falsified data generated by a younger
2 courier who "ran" the route and entered delivery data in a manner
3 that made it appear to be possible to complete more deliveries
4 than would be possible in compliance with Fed Ex delivery
5 policies. The practice of altering routes and benchmarks based
6 on such data has been used to encourage older couriers to leave
7 the company.

8 49. Fed Ex's headquarters issues a fiscal formula, the
9 Permanent/Full-Time Equivalency ("P/FTE"), to industrial
10 engineers and senior managers at each station.

11 50. Headquarters issues the P/FTE formula for stations to
12 lower the station's costs while performing the same tasks. The
13 performance goal is to reduce the hours worked to perform the
14 station tasks. On information and belief, there is a parallel
15 budget goal of reducing the cost of performing the tasks.

16 51. P/FTE monthly goals are discriminated by Fed Ex senior
17 executives to managers. For example, in an email by Fed Ex
18 senior executive Bill Logue on February 21, 2005 to "All-DGO
19 Management," Logue discusses route reduction and P/FTE
20 "improvement" to achieve the goals set by headquarters.

21 52. On information and belief, Fed Ex considers the hourly
22 cost of each hourly employee in deciding how to allocate hours
23 assigned to each station so that there is an incentive to cut the
24 hours of employees with higher benefits costs.

25 53. Fed Ex allocates hours to its employees in a way that
26 harms its older, more experienced couriers and other hourly
27
28

1 employees.

2 54. Fed Ex has set P/FTE goals in a manner that has harmed
3 couriers 44 and older with 10 or more years of experience
4 disproportionately by taking hours from Plaintiffs and other
5 similarly situated couriers and giving those hours to younger
6 couriers with less experience than the Plaintiffs and other
7 members of the class of older, more experienced employees.

8 55. Fed Ex has no legitimate business reason for using the
9 P/FTE mechanism for discriminating against the Plaintiffs and
10 older, more experienced employees.

11 56. Age has been a motivating factor in Fed Ex's decisions
12 to increase stops per hour of older workers and to allocate more
13 hours to younger ones.

14 57. Fed Ex evaluates its station managers based on whether
15 or not the station adhered to the P/FTE's issued from
16 headquarters and repeatedly lowered station costs.

17 58. Under the Fed Ex policy of P/FTE, Fed Ex rewards
18 managers who reduce the hours worked by older couriers, ramp
19 transport drivers, handlers, operations managers and service
20 agents to reduce the station's costs. This policy harms older
21 experienced employees but rewards less experienced employees
22 under age 44 by increasing their hours and pay. Managers receive
23 a bonus for adhering to the P/FTE hrs given to station from Fed
24 Ex headquarters.

25 59. In 2004 and 2005 managers' performance was reviewed for
26 effectiveness in meeting P/FTE goals. The category is "Results
27
28

1 for Single Most Critical Work Objective."

2 60. Managers may be terminated for not meeting "FTE" goals.

3 61. The Fed Ex FTE policy has harmed experienced older
4 disproportionately and has favored younger, less experienced
5 employees.

6 62. Managers are rated and are paid bonuses based in large
7 part on station performance.

8 63. Station performance criteria include: "on time"
9 delivery rates; stops per man hour worked by couriers; and
10 controlling budget factors such as labor and equipment costs.

11 64. On information and belief, labor costs assigned to each
12 station's budget include the base pay, overtime and benefits paid
13 to hourly workers assigned to that station.

14 65. On information and belief, managers are regularly
15 advised by headquarters personnel regarding factors that increase
16 their labor budget.

17 66. From some point before 1974 until January 1, 2004, Fed
18 Ex offered a defined benefit retirement plan to its full time
19 couriers, service agents, operations managers, ramp transport
20 drivers and other hourly employees.

21 67. Under the defined benefit plan, the annual cost of
22 funding a worker over 44 years older is higher than the annual
23 cost of funding a worker under 40.

24 68. Under the defined benefit retirement plan, the amount
25 contributed for a plan member may be substantially less than the
26 amount vested for a member whose employment terminates before
27

1 full retirement eligibility is met. That difference is refunded
2 to the plan upon the member's departure. At least until 2007, Fed
3 Ex could reduce its contributions in subsequent years if the plan
4 recovered such amounts from employees terminated before full
5 retirement eligibility.

6 69. Fed Ex provides a health care plan for its employees
7 and some of its retired employees. The cost of providing medical
8 benefits increases with the age of the medical benefit plan
9 population.

10 70. The cost to Fed Ex of providing short term and long
11 term disability benefits increases with the age of the employees
12 covered by the plan.

13 71. Fed Ex has, at least since the mid-1990's, offered to
14 subsidize the cost of retiree medical benefits for hourly
15 employees who retire from a full time hourly employment status to
16 full retirement benefits under a Fed Ex plan.

17 72. Fed Ex is required to book the projected cost of
18 retiree medical benefits during the years the employee is
19 working, prior to retirement.

20 73. Fed Ex may recover funds booked for retiree medical
21 benefits costs if employment is terminated in a manner that makes
22 the employee ineligible for employer subsidized retiree medical
23 benefits. Such recovered funds can be used to offset the
24 projected retiree medical benefits costs projected for current
25 employees.

26 74. Fed Ex retiree healthcare costs decreased by 18 million
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28

1 | dollars from 2006 to 2007 according the 2007 Fed Ex Annual
2 | Report.

3 | 75. Couriers hired prior to 2004 are eligible to
4 | participate in the defined benefit retirement plan. Couriers
5 | hired after that date are not.

6 | 76. Fed Ex amended the defined benefit plan so that
7 | couriers cannot accrue additional benefits under that plan after
8 | June 1, 2008.

9 | 77. The cost to Fed Ex of annual contributions required to
10 | fund benefits for participants in the defined benefit retirement
11 | plan was substantially higher (at least until January 1, 2008)
12 | than the cost of annual contributions for those in the defined
13 | contribution plan that replaced it.

14 | 78. The cost of funding defined benefit retirement benefits
15 | increases with the age of the employee.

16 | 79. As part of its compensation to hourly workers, Fed Ex
17 | provides a health plan that assures assistance to the employee in
18 | the payment of medical expenses, drug prescriptions, and dental
19 | expenses. Fed Ex provides a Medical Absence Pay and Short Term
20 | and Long Term disability benefits if a courier is sick or injured
21 | and unable to work.

22 | 80. Fed Ex provides a Portable Pension Plan. Fed Ex
23 | expects its pension cost to Fed Ex to increase in 2008.

24 | 81. Upon information and belief, Fed Ex has administered
25 | its policies in a discriminatory manner against older hourly
26 | workers to eliminate these older workers from its work force,
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28 |

1 | which would reduce its labor costs and the costs of its health
2 | and medical benefits, retirement program, and other employee
3 | benefit plans as seen in the reduction in retiree health
4 | benefits.

5 | 82. Fed Ex couriers carry devices that scan information
6 | about packages upon pick up and upon delivery including the time
7 | that a package is picked up and delivered. Most delivery
8 | vehicles are equipped to upload information from the scanning
9 | device to the Fed Ex tracking system. The information is
10 | transmitted multiple times each day from each scanner to the
11 | courier's home station and to headquarters.

12 | 83. The scanning devices do not verify location. The
13 | device records a package as delivered to its destination at the
14 | time the courier causes it to be scanned as "delivered" whether
15 | or not the courier has actually delivered the package at that
16 | point.

17 | 84. Fed Ex policies specify that a package should be
18 | scanned as "delivered" at the moment of delivery.

19 | 85. Scanning packages as "delivered" at a time other than
20 | the moment of delivery is a practice that can substantially
21 | improve station and individual courier performance statistics
22 | such as "on time" delivery and stops per hour.

23 | 86. "Deliberately falsifying" delivery is a termination
24 | offense under section 2-5 of the Fed Ex "People Manual" which
25 | applies to all Fed Ex employees.

26 | 87. Inaccurate package delivery records may be entered for
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1 a number of legitimate reasons. For example, a package might be
2 too large for the courier to handle the scanner, so that the
3 package is scanned upon leaving the truck. Similarly, a courier
4 may attempt a delivery, scan in the "nobody home" code (DEX08),
5 only to find that the recipient was home and took the package.
6 Conversely, a customer may be distracted during a delivery, after
7 the package is scanned, and not accept it for some time.

8 88. Station managers rarely audit most couriers to
9 determine whether packages are actually delivered at the time
10 they are scanned.

11 89. Station level managers frequently provide negative
12 feedback to couriers whose deliveries are logged as "late."

13 90. Audits are conducted periodically by headquarters
14 personnel to determine whether the station is in compliance with
15 delivery rules and policies.

16 91. Upon information and belief, older couriers (44 and
17 over) and more experienced employees, including many of the
18 plaintiffs, are targeted for audits to discover instances of
19 inaccurate delivery entries, while younger couriers are not
20 subject to similar scrutiny.

21 92. Upon information and belief Defendant Fed Ex has
22 disproportionately adjusted routes to increase stops per hour or
23 otherwise make meeting the performance standards excessively
24 difficult for couriers 44 and older, as compared to those for
25 couriers under 44 years of age.

26 93. Fed Ex has reduced the work hours for the Plaintiffs
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1 set forth in Appendix A, Appendix B and Appendix C.

2 94. On check-rides managers "write-up" older couriers for
3 not wearing the "right color socks" or not "walking-briskly."
4 When managers writeup couriers or increase couriers' stops-per-
5 hour to an unattainable goal, managers are applying Fed Ex's
6 discriminatory policies against Plaintiffs and similarly situated
7 older couriers.

8 95. Senior Managers issue discipline selectively to older
9 operations managers; that is, those 44 years of age and older.

10 96. Managers issue discipline to older couriers, ramp
11 transport drivers and service agents 44 and over more frequently
12 than those under 44 years of age.

13 97. Fed Ex hourly employees 44 and over with ten or more
14 years of experience are terminated for "falsification" while
15 younger couriers perform the same duties without penalty.

16 98. Under Fed Ex policy, negative "Counselings" include
17 Warning Letters or Performance Reminders.

18 99. Hourly employees, including couriers, ramp transport
19 drivers, service agents and operations managers, are normally
20 terminated when there are three negative Counselings in their
21 file.

22 100. In 2006, Fed Ex issued negative "Counselings" to
23 couriers 44 and older with ten years of experience at four times
24 the rate that it issued negative "Counselings" to couriers under
25 40 years of age with ten years of experience.

26 101. Upon information and belief, Fed Ex uses BP, and Stops-
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1 Per Hour to compel and encourage older, experienced couriers and
2 other employees to quit or retire from their employment with Fed
3 Ex before they attain years of service required for full retiree
4 health benefits.

5 102. Upon information and belief, Fed Ex wants hourly
6 workers over 44 with more than 10 years' company tenure to quit
7 or be terminated before they reach 65 years of age or older with
8 more than twenty five years of experience.

9 103. Fed Ex focuses intense scrutiny on older more
10 experienced employees injured on the job or who otherwise require
11 medical absence and Fed Ex discharges such older more experienced
12 employees disproportionately and induces such employees to retire
13 or otherwise to leave its employment.

14 104. Fed Ex treats older, more experienced couriers, ramp
15 transport drivers and service agents who are injured for more
16 than 90 days as "displaced employees" by causing them to lose
17 their regular routes and other duties and such employees may be
18 terminated if they do not find another route or position within
19 Fed Ex.

20 105. Fed Ex has not treated younger couriers, ramp transport
21 drivers, operations managers and service agents, who have been
22 injured or who have otherwise required medical absences, with
23 such scrutiny.

24 106. Injured older couriers, ramp transport drivers or
25 service agents increase station costs and Fed Ex frequently
26 displaces them by removing the courier/driver from his route and
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1 replacing him with a younger courier/driver, forcing the senior
2 courier/driver to find another opening somewhere in the United
3 States. The same happens to service agents.

4 107. Under the policies and practices described above, Fed
5 Ex has given preference to younger, less experienced couriers in
6 starting times, assignments of production goals, overtime
7 assignments, route assignments, discipline, performance
8 evaluations, holding routes open pending return to work and other
9 terms and conditions of employment as compared to older more
10 experienced couriers, including Plaintiffs and other members of
11 the class.

12 108. Employment practices by Defendant Fed Ex that
13 discriminate against older more experienced couriers, ramp
14 transport drivers and service agents and favor younger couriers,
15 ramp transport drivers and service agents because their age are
16 the prevailing pattern and practice of Fed Ex in California.
17 Upon information and belief, Fed Ex has followed such age
18 discriminatory employment practices throughout the United States
19 that favor younger couriers at the expense of other older hourly
20 employees.

21 109. Unless restrained by order of this Court, Defendant
22 will continue to pursue policies and practices that cause
23 Plaintiffs and other similarly situated older couriers to suffer
24 irreparable harm.

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COLLECTIVE ACTION ALLEGATIONS

110. Defendant is engaged in a pattern or practice of treating hourly employees over 44 and with ten or more years of service less favorably than employees under 44 in disciplinary action, assignments and terminations.

111. Plaintiffs are similarly situated to each other because they have been harassed and threatened with the Defendant Fed Ex's pattern or practice of age discrimination in employment in violation of the ADEA, 29 U.S.C. § 216(b) and 626(b).

112. Defendant Fed Ex has employed thousands of other hourly employees over 44 years of age with ten years of service.

113. Defendant has employed thousands of hourly employees who have been adversely affected by its discriminatory discipline, assignment and termination practices and who are similarly situated to the Plaintiffs.

114. Defendant's pattern or practice of discrimination and its practices that disparately impact older hourly workers are directed from its headquarters in Memphis.

CLASS ALLEGATIONS - California Class

115. Plaintiffs Hulac, Fingarson and Stewart and six other Plaintiffs listed in Appendix D are present and former Fed Ex hourly workers who were or are employed in an establishment located in the State of California.

116. Fed Ex with more than 10 years of service with Fed Ex and who have been harmed by Fed Ex's discriminatory conduct since they passed the age of 44, including loss of pay and termination

1 of employment, as a result of defendant's pattern of
2 discrimination against older workers.

3 117. Fed Ex has employed well over 500 hourly workers in
4 California who have suffered adverse employment actions since
5 they passed the age of 44 with more than ten years of company
6 tenure, including loss of pay and termination of employment, as a
7 result of defendant's pattern of discrimination against older
8 workers. The claims of the members of the class are so numerous
9 that joinder would be impractical.

10 118. *Commonality*. The questions of fact and law of the
11 named individual California resident Plaintiffs are common to
12 other members of the class. Common questions of fact and law
13 predominate over other questions affecting individual class
14 members.

15 119. *Typicality*. The named California Plaintiffs have
16 claims that are typical of those of the other class members.

17 122. *Adequacy*. The class representatives will adequately
18 represent the class. The class representatives have no interests
19 that conflict with the interests of unnamed members of the
20 class. They are interested in pursuing relief vigorously. They
21 have retained qualified counsel. Their legal representatives,
22 Rose & Rose, P.C., will adequately represent the class.

23 123. Pursuit of the claims of the class members in separate
24 individual actions by employees carries a risk of inconsistent
25 and varying adjudications. As a practical matter, adjudications
26 with respect to individual employees may be dispositive of the
27
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1 interests of other employees, or may substantially impede or
2 impair their ability to protect their interests with regard to
3 the class claims.

4 124. A class action is superior to other methods for the
5 fair and efficient adjudication of the claims of the class
6 members because the claims involve the interpretation of common
7 documents and work situations. It would not be in the best
8 interests of the present and former employees to individually
9 control the prosecution of the claims. Without a class action,
10 it is unlikely that most individual employees would be
11 economically able to bring suit.

12 125. There are no unusual legal or factual issues creating
13 class manageability problems.

14 **CLASS ALLEGATIONS - ERISA CLASS**

15 126. Plaintiffs Appendices A-E are present and former Fed
16 Ex hourly workers who have been eligible to participate in Fed Ex
17 employee benefits plans.

18 127. Fed Ex has employed over 10,000 hourly workers who
19 have suffered adverse employment actions in whole or in part for
20 the purpose of interfering with their ability to obtain benefits
21 under Fed Ex employee benefit plans. The claims of the members of
22 the class are so numerous that joinder would be impractical.

23 128. *Commonality*. The questions of fact and law of the
24 named individual California resident Plaintiffs are common to
25 other members of the class. Common questions of fact and law
26 predominate over other questions affecting individual class
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1 members.

2 129. *Typicality.* The named California Plaintiffs have
3 claims that are typical of those of the other class members.

4 130. *Adequacy.* The class representatives will adequately
5 represent the class. The class representatives have no interests
6 that conflict with the interests of unnamed members of the
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14 interests of other employees, or may substantially impede or
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21 interests of the present and former employees to individually
22 control the prosecution of the claims. Without a class action,
23 it is unlikely that most individual employees would be
24 economically able to bring suit.

25 133. There are no unusual legal or factual issues creating
26 class manageability problems.

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Representative Claims

Terminated

Plaintiff Fred Hulac - California

134. Fed Ex terminated Plaintiff Hulac for allegedly falsifying his timecard. Plaintiff Hulac used a timecard in his truck to be more efficient. Keeping a timecard in your vehicle was a practice at his station. He was on leave when this practice changed and he was never informed of any policy change.

135. He was terminated for "deliberate falsification." He did not record additional hours; he only sought to be more efficient for Fed Ex. Plaintiff Hulac was terminated because he was 54 years of age and because said termination would prevent him from collecting retirement and from receiving retiree medical benefits.

Plaintiff Larry Mungiello- New Jersey

136. Fed Ex terminated Larry Mungiello on 8/31/05 for alleged violation of policy 2-5. Mr. Mungiello used a courier code because there was no place to park near the dock where he was to deliver packages. Mr. Mungiello has more than 150 Fed Ex documents showing couriers then under 40 years of age deliberately falsified records but they were not terminated by Fed Ex for those acts.

137. Mr. Mungiello denies falsifying and believes he was

1 targeted for termination because of his age. Plaintiff Mungiello
2 was 64 when Fed Ex terminated him.

3 Counselings to Mungiello state:

4 "LARRY THIS IS TO ACKNOWLEDGE THAT YOU HAVE MISSED YOUR 278 GOAL
5 FOR THE PAST TWO WEEKS.FOR THE WEEK ENDING 04/16/04 YOU WERE AT
6 88.62% AND FOR THE WEEK ENDING 04/23/04 YOU WERE AT 86.20.BOTH
7 THESE WEEKS YOU MISSED YOUR ONROAD GOAL BY MORE THAN 10%.AS YOU
8 KNOW THIS IS UNACCEPTABLE AND ANY FUTURE OCCURENCES MAY RESULT IN
9 FURTHER DISCIPLINARY ACTION.....PHIL"

10 "LARRY THIS IS FOR YOU TO ACKNOWLEDGE THAT AS PER THE FORMAL
11 COUNSEL YOU RECIEVED ON MARCH 5TH YOU HAVE ON MONDAY JUNE 14TH
12 REVERTED BACK TO THIS SAME UNACCEPTABLE PRACTICE. YOU HAVE NOT
13 ONLY FAILED TO FOLLOW MY DIRECTIVE BUT AT THE SAME TIME YOU
14 FAILED TO MEET YOUR ONROAD PERFORMANCE. PLEASE TAKE ALL NECESSARY
15 STEPS TO AVOID THESE PRACTICES IN THE FUTURE.....PHIL"

16 Plaintiff Sandra Mason - Texas

17 138. Plaintiff Mason was a courier of Fed Ex and thereafter
18 became an Operations Manager. Fed Ex terminated the employment
19 of the Plaintiff for an alleged violation of policy 2-5
20 Acceptable Conduct. Plaintiff had an angioplasty performed in
21 2004 and after she returned to work Fed Ex repeatedly alleged Ms.
22 Mason violated policies.
23

24 139. Fed Ex has asserted that Plaintiff Mason falsified
25 employee time cards when she added a code to a timecard after
26 employees watched a required Fed Ex Frontline video, which is
27
28

1 delivered from headquarters. Ms. Mason has 85 instances showing
2 other managers adding the same code to employee timecards and
3 they were not terminated for that specific act. Policy 2-5
4 states "alleged violations should be thoroughly investigated and
5 documented." Fed Ex did not interview other managers at her
6 station concerning Ms. Mason's suspension and termination and
7 upon information and belief, conducted no investigation. Ms.
8 Mason, a 23 year employee, who was born in 1955, was terminated
9 by Fed Ex because of her age and/or because of the costs to
10 Defendant of her benefits and eligibility for retiree health
11 insurance.
12

13 Plaintiff Romas Jasiulevicius - Florida

14 140. Fed Ex terminated the employment and Plaintiff
15 Jasiulevicius from its employment on 7/12/07. He received a
16 counseling for having an attendance rate of "99.6%" and were
17 informed by Fed Ex that if he fell below that level of attendance
18 he would receive a performance reminder. Younger couriers at his
19 station were not held to a 99.6% but to a lower 96% standard.
20

21 141. Counselings from Fed Ex:

22 "ROMAS, THIS IS TO LET YOU KNOW THAT YOU ARE CURRENTLY AT **99.6%**
23 FOR ATTENDANCE. IF YOU FALL BELOW THIS PERCENTAGE YOU WILL
24 RECEIVE A PERFORMANCE REMINDER."

25 "MIKE, YOUR ATTENDANCE IS AT **93.8%** RIGHT NOW, BELOW THE **96.0**
26 STANDARD. PLS MAKE SURE THIS GOES IN AN UPWARD TREND.
27
28

1 ANOTHER SICK DAY MAY WARRANT A PERFORMANCE REMINDER."
2 "ROMAS, YOU AND MIKE SMYTH ARE TO KEEP SEPERATED AT ALL TIMES
3 WHILE AT WORK. NO REMARKS ARE TO BE MADE TO EACH OTHER OR
4 ANYONE ELSE REGARDING THE OTHER PERSON. ANY MUD SLINGING, RUMOR
5 STARTING OR REMARKS MADE ABOUT EACH OTHER WILL RESULT IN
6 DISCIPLINARY ACTION. THIS IS THE ONLY WARNING THE TWO OF YOU
7 WILL RECEIVE."

8
9 Plaintiff Rocco Notarfrancesco - New Jersey

10 142. Plaintiff Rocco Notarfrancesco repeatedly received
11 Counselings, Warning Letters and Performance Reminders for
12 conduct repeated by other couriers at his station. As of 5/13/08
13 he has been suspended with pay for 13 days for conduct admittedly
14 done by at least two other couriers at his station, Marty McGraph
15 and Russ Morgan. Plaintiff Notarfrancesco has had the same route
16 for more than 17 years.

17 143. On May 21, 2008 Fed Ex terminated the employment of
18 Plaintiff Notarfrancesco for allegedly using DEX Code 08 to
19 increase his stops per hour. However, managers Joseph Hines and
20 Freddy Rowe repeatedly issued counselings and performance
21 reminders to Plaintiff Notarfrancesco for "not meeting" his stops
22 per hour.

23
24 Still Employed

25 Plaintiff Barry Barnett - Indiana

26 144. Plaintiff Barnett has 17 counselings. He is
27
28

1 repeatedly warned and counseled for his stops per hour. It is
2 customary for Fed Ex to use a younger driver when a senior
3 courier is on leave to justify increasing the senior courier's
4 stops per hour. Mr. Barnett took an extended leave of absence due
5 to stress placed on him by managers targeting him for
6 termination. Mr. Barnett continues to be harassed and targeted
7 by managers.

8
9 145. Counselings from Fed Ex Managers:

10 "BARRY, LAST WEEK YOU RAN 12.8 SPH AND YOUR GOAL WAS 15.5 SPH.
11 THE WEEK BEFORE YOU RAN 12.8 SPH AND YOU GOAL WAS 15.5SPH. YOU
12 ARE RUNNING LESS THAN 87% OF YOUR PLANNED GOAL.ALSO, WITHIN THE
13 LAST 7DAYS YOU WERE OFF BY MORE THAN 2 COUNTS ON YOUR P2 4 OF THE
14 DAYS AND OVER 15 MW YOU ARE RUNNING LESS THAN 87% OF YOUR PLANNED
15 GOAL. ALSO, WITHIN THE LAST 7 DAYS YOU WERE OFF BY MORE THAN 2
16 COUNTS ON YOUR P24 OF THE DAYS AND OVER 15 MIN OF YOUR SLIDING
17 CLEAR 6 OF THE DAYS. I HAVE GIVEN YOU A COPY OF YOUR 280 GOALS.
18 PLZ FOCUS AND DE BETTER IN THESE AREAS. J"

19 "BARRY, WE REVIEWED YOUR NEW GOALS AND DISCUSSED THAT I WILL BE
20 DOING A CHECKRIDE ON YOU NEXT THURSDAY 062206 TO HELP COACH YOU
21 ON YOUR METHODS THAT WERE DISCUSSED ON THE CHECK RIDE ON 061206.
22 WE USED A SWING DRIVER TO SET YOUR TUES-FRID GOAL SINCE YOU
23 CALLED IN SICK ON TUESDAY. I LOOK FORWARD TO OUR RIDE. IF YOU
24 HAVE ANY QUESTIONS PLEASE SEE ME."

25
26 146. Fed Ex terminated or forced to quit Plaintiffs listed
27 on the graph at pages 30-35 under false allegations of
28

falsification of a delivery, misconduct or failure to report an accident, under Fed Ex Acceptable Conduct Policy 2-5.

147. The Plaintiffs are listed in the chart below at 31-36 with the state in which the Plaintiff worked, the Plaintiff's name, the alleged conduct that brought termination by Fed Ex, age at termination, years of service (YOS) with Fed Ex and the year Fed Ex terminated the Plaintiff:

State Employed	Plaintiff	Alleged Conduct	Age	YOS	Year Terminated
California	Fred Hulac,	Falsification	54	22	1/9/07
	Glendora Spinks	Displaced; unable to lift 70 lbs after returning to work from an injury	52	14	4/21/05
Colorado	Lori Bernstein	Displaced; unable to lift 70 lbs after returning to work from injury and given a bulk route	44	22	4/4/06
Connecticut	Delno Clark	Falsification	48	21	
Arizona	Raul Armendariz	Falsification	50	21	12/21/06
	Plaintiff	Alleged Conduct	Age	YOS	Year Terminated

1	Florida	John	"Horsing	53	13	5/20/07
2		Pellegren	Around"			
3			Policy 2-5			
4						
5		Susan Elins	Falsification	46	12	1/2008
6			Policy 2-5			
7						
8		Peggy Whitman	Falsification	51	20	11/12/07
9			Policy 2-5			
10						
11		Romas	Falsification	45	20	7/12/07
12		Jasiulevicius	Policy 2-5			
13						
14		Rich	Forced Out	44	22	2/24/07
15		Salvatore				
16						
17	Georgia	Jerome	Falsification	47	21	3/4/05
18		Vanderable	Policy 2-5			
19	Hawaii	Sherrie Smith	Falsification	51	21	12/16/04
20			Policy 2-5			
21						
22		Edward	Falsification	49	13	1/24/05
23		Medeiros	Policy 2-5			
24						
25		Rian	Falsification	44	13	7/24/06
26		Takeshita	Policy 2-5			
27						
28						

1	Iowa	Steven	Falsification	46	22	2/2/04
2		Suttermann	Policy 2-5			
3	Maryland	Samuel	Falsification	51	11	4/13/05
4		Kudjordji	Policy 2-5			
5						
6		Lani Gibbons	Falsification	54	17	6/26/07
7			Policy 2-5			
8						
9		Sammy Smith	Policy 2-5	47	16	3/14/07
10	Mass.	Peter Fay	Policy 2-5	47	20	2/21/02
11						
12						
13		Michael	Falsification	48	20	10/7/05
14		Kelley	Policy 2-5			
15						
16		John Neil	Falsification	50	22	3/07
17			Policy 2-5			
18						
19		Kenneth Kumm	Falsification	49	25	10/25/05
20			Policy 2-5			
21						
22						
23						
24						
25						
26						
27						
28						

1	Michigan	Lizzie	Falsification	51	20	7/5/05
2		Middlebrook	Policy 2-5			
3						
4		Debroah	Falsification	59	28	3/15/07
5		Ridenhour	Policy 2-5			
6	New Jersey	Larry	Falsification	64	18	8/31/05
7		Mungiello	Policy 2-5			
8		Rocco	Falsification	52	21	5/21/08
9		Notarfranceso	Policy 2-5			
10	New Mexico	Steven	Called	53	18	6/24/04
11		Goldberg	customers			
12			while			
13			delivering			
14			package			
15						
16	New York	Maggie Dean	Accident	45	14	2/4/05
17	North	Sandra	Falsification	58	11	4/9/07
18	Carolina	Compton	Policy 2-5			
19						
20		Michael Dill	Falsification			
21			Policy 2-5			
22	Ohio	Shryl	Displaced	46	11	10/17/05
23		Weideman				
24						
25		Ronald Adams	Falsification	48	18	7/18/05
26			Policy 2-5			
27						
28						

1	Oklahoma	William	1 overlooked	57	17	6/10/05
2		Watkins	package			
3						
4		Edward Jones		50	15	8/30/05
5			Falsification			
6			Policy 2-5			
7	Oregon	Belynda Ryles	Displaced; unable	47	22	9/24/04
8			to lift 70 lbs			
9			after returning to			
10			work from an injury			
11			Falsification			
12		Jeff	Policy 2-5	52	24	9/22/06
13		McEllreth				
14						
15	Tennessee	Michael Parks	Terminated for	48	20	9/25/04
16			Stops per hour			
17						
18		Kenneth Adams	Falsification	48	19	6/10/05
19			Policy 2-5			
20		Ricki				
21		Stillwell	Falsification	51	17	6/23/06
22			Policy 2-5			
23						
24		Verna	Falsification	52	24	8/11/06
25		Standback	Policy 2-5			
26						
27						
28						

1	Texas	Sandra Mason	Falsification	47	23	6/12/05
2			Policy 2-5			
3	Wisconsin	Robert	Unreported	45	22	11/14/06
4		Willette	Traffic			
5			Citation			
6						
7	Illinois	Bonnie Boston	Displaced	47	16	2/1/2003

8

9 Hulac

10 148. Plaintiff Fred Hulac ("Hulac") is a resident of Santa
 11 Rosa, California. He was born on March 27, 1952. Fed Ex employed
 12 Plaintiff Hulac in California as a courier for more than twenty-
 13 two years at the STSA station in this district.

14 149. Fed Ex terminated Plaintiff Hulac's employment on
 15 January 9, 2007 for using a timecard kept in his truck. When
 16 Plaintiff Hulac pulled into the parking lot at Fed Ex station STSA
 17 after a week of vacation on Tuesday, January 7, 2007, his wife
 18 called to inform him that "Tammy from Fed Ex called" his home to
 19 inform him that the new start time is 7:00am.

20 150. Plaintiff Hulac's typical Tuesday start times were
 21 7:40am and 7:50am. On the morning of January 7, 2007 he left his
 22 home at 6:45 am to arrive on time.

23 151. Plaintiff Hulac arrived at the station at "7:05am" not
 24 wanting to be late. He rushed into the building, but there was no
 25 time card left for him by managers. To sign in for the day he
 26

1 grabbed a blank time card from his truck and marked it for a
2 starting time of 7:05am.

3 152. Plaintiff Hulac left a post-it note on his manager's
4 door explaining how he signed in for that day.

5 153. Younger couriers at Hulac's station have used blank
6 time cards kept in their vehicles and none of those couriers was
7 terminated for using a blank time card.

8 154. Plaintiff Hulac never had a chance to inform managers
9 of his time card entry when he returned to the station because all
10 managers had left by 6:40pm and his cell phone battery was dead.
11 He left another note on the door of his operations manager but she
12 allegedly never saw it.

13 155. Hulac never falsified in his 22 year career as a
14 courier. Fed Ex terminated Hulac 11 weeks before his 55th birthday
15 when he could have vested in the retiree healthcare benefits
16 program.

17 156. An office employee at Fed Ex spoke with Mrs. Hulac
18 minutes before his arrival at his station. His managers did not
19 leave a time card with his name on it for him, which forced
20 Plaintiff Hulac to use any time card he had. He signed in giving
21 the "new" start time a few minutes after he learned to sign in.

22 157. Fed Ex to discriminate against Plaintiff Hulac and
23 other older employees with ten or more years of service employees.
24 Fed Ex applies its policy of falsification, (Acceptable Conduct
25 Policy 2-5) is applied in a discriminatory way to couriers, ramp
26
27
28

1 transport drivers, service agent, handlers and operations managers
2 44 and older with 10 or more years of experience and favors
3 younger, less experienced for employees.
4

5 Fingarson

6 158. Plaintiff Kathy Fingarson ("Fingarson") is a resident
7 of Jenner, California. Fed Ex hired Plaintiff Fingarson on
8 September 1, 1988. Plaintiff Fingarson worked at the STSA station
9 and is currently working at the NOTA station in this District.
10 She was born on October 31, 1953.
11

12 159. Defendant schedules Plaintiff Kathy Fingarson and other
13 couriers age 44 or older at the NOTA station for fewer hours than
14 couriers under the age of 40. Fed Ex issued eight negative
15 "Counselings" for Plaintiff Fingarson as a form of disciplinary
16 action, placed in the Online Documented Counseling and Compliment
17 "OLCC" PRISM system, although it did not take any disciplinary
18 action against younger couriers for similar practices.
19

20 Stewart

21 160. Plaintiff William Stewart, employee number 32409,
22 worked at the STSA Fed Ex station in Santa Rosa, California for
23 twenty-three years. He was born on 3/27/1952. He worked 2209.45
24 total hours in 2004, 1759.03 hours in 2005 and 1431.36 hours in
25 2006. Fed Ex allocated more hours to younger less experienced
26 couriersthan to Plaintiff Stewart. Defendant placed him on
27 indefinite suspension after he had an accident while working as a
28

1 courier. Fed Ex then called him and told him to return to work
2 the following Monday.

3 161. Defendant did not inform Plaintiff Stewart of any
4 business reason for suspending him and did not advise him of
5 findings of any Fed Ex investigation. He retired from Fed Ex on
6 3/28/2007, because he reasonably believed that Fed Ex would
7 terminate his employment if he did not do so, and became separated
8 from Fed Ex after his income had been sharply reduced.

9
10 **EEOC Charges - NOTICE TO THE DEFENDANT OF ALLEGATIONS**
11 **OF AGE DISCRIMINATORY EMPLOYMENT PRACTICES**

12 162. Plaintiffs have exhausted California age discrimination
13 law requirements by filing charges with the FEHA.

14 163. Plaintiffs have met the charge filing requirement of 29
15 U.S.C. §626(d).

16 164. Defendant has been engaged in a pattern and practice of
17 unlawful age discrimination against plaintiffs and other similarly
18 situated older experienced employees from before 1997 through the
19 present.

20 165. Fed Ex had 333 ADEA charges filed against it with the
21 EEOC from 2001 thru 2007, but only one had a successful
22 conciliation in 2006.

23 166. The Defendant Fed Ex has had notice of the allegations
24 of discriminatory employment practices since September 30, 1997
25 when a charge number 15B970137 was filed by courier Ronald
26 Clausnitzer. Gerald Freeman filed a charge with the EEOC and the
27

1 Clearwater Human Relations Dept. in 1997. The EEOC charge number
2 for Mr. Freeman is 15B960120 and the FEPA charge number is
3 PCO#9607-02543.

4 167. A law suit was filed alleging nationwide discrimination
5 against older couriers on or about October 26, 1999. That suit
6 was filed by Freeman, Clausnitzer Vincent Maccia, Wayne Tate,
7 Kathy Creamer and William Krolman , 99-2466-CIV-T-25B filed in
8 Florida on October 27, 1999 and that suit was dismissed in 2002.

9 168. Any forth effort at conciliation of the allegations in
10 the case would have been futile. Id.

11 169. Plaintiff Richard Boyd filed a charge of age
12 discrimination against Fed Ex on December 22, 2003.

13 170. In 1997 Clausnitzer and four other couriers filed
14 charges of age discrimination and alleged a nationwide pattern of
15 same.

16 171. Fed Ex continues its discriminatory practices against
17 the Plaintiffs and other older couriers, ramp transport drivers,
18 service agents and operations managers.

19 172. Plaintiff Raul Armendariz received a right to sue
20 letter on 12/21/2007 from EEOC based upon charge number 540-2007-
21 01910.

22 173. Plaintiff Jeff McEllrath filed a charge against Fed Ex
23 with the EEOC for age discrimination. He received a right to sue
24 letter on 1/15/2008, based upon charge number 551-2006-00517.

25 174. Plaintiff Michael Parks filed a charge against Fed Ex
26
27
28

1 with the EEOC for age discrimination on 3/7/2007. The charge
2 number is 494-2007-01495.

3 175. Plaintiff Michael Breitenstein filed an age
4 discrimination charge and retaliation charge with the EEOC in
5 2007. His charge numbers are 437-2008-00197 and 22A-2007-04723.

6 176. Plaintiff Hulac filed his EEOC charge on 12/3/2007.
7 The charge number is 550-2008-00613.

8 177. Plaintiff Fingarson filed a charge with the EEOC and
9 cross-filed it with the California Department of Fair Employment
10 and Housing on 1/14/2007.

11 178. Plaintiff David Williams filed a charge with the EEOC
12 in 2007 and received a right to sue letter in March 2008.

13 179. Plaintiff Cedric Roane filed an age discrimination
14 charge with the EEOC in October 2007.

15 180. Plaintiff Sarah Dancer filed an age discrimination
16 charge with the EEOC on 9/7/2007.

17 181. Plaintiff Wilma Goree filed a charge of age
18 discrimination against Fed Ex on 8/30/2005 and received a right to
19 sue letter on 8/30/2005. The charge number is 311-2005-01559.
20 Plaintiff Goree filed a retaliation charge on 11/29/2006. The
21 charge number is 564-2007-00294.

22 182. Plaintiff Kenneth Kumm filed a charge with the EEOC on
23 11/28/2005, charge number 161-2005-00143.

24 183. Plaintiff Edward Jones filed a charge of age
25 discrimination by Fed Ex with the EEOC on 10/3/2007.
26
27
28

1 184. Plaintiff Valentin filed a charge with the EEOC in
2 April 2008.

3 185. The plaintiffs listed in Appendix D were named and/or
4 filed "opt in" forms in an action known as Clausnitzer, et al v.
5 Fed Ex (CD Cal. cv 05-1290 ANx DOC). An order entered in that
6 case on October 19, 2007 denied class/collective action
7 certification. That Order was dismissed without prejudice "to the
8 plaintiffs listed on Appendix D. Plaintiffs' Rule 59(e) motion to
9 alter and or judgment against the five plaintiffs in that action
10 is pending for decision in the district court in the Central
11 Division.
12

13 **CLAIM ONE**

14 **For Discrimination in Violation of the ADEA**

15 **(On Behalf of All Plaintiffs and the Class)**

16 186. Plaintiffs reassert and reallege paragraphs 1 through
17 191, inclusive, and fully set forth and incorporate said
18 paragraphs herein by reference.

19 187. Plaintiffs and the class of similarly situated older
20 hourly workers are all age 44 or older.

21 188. Plaintiffs have met the charge filing requirements of
22 the ADEA as alleged above.
23

24 189. Plaintiffs and the class of similarly situated older
25 couriers were all well-qualified to perform the job
26 responsibilities of a Fed Ex courier. Each performed his or her
27
28

1 job in a satisfactory manner. Each had more experience than most
2 younger employees.

3 190. The employment practices of Fed Ex described above
4 disproportionately harmed Plaintiffs and the class of similarly
5 situated older couriers while favoring younger couriers. The
6 practices so described had a disparate impact against hourly
7 workers over 44 and are not based upon a reasonable factor other
8 than age.

9 191. Defendant has knowingly and purposefully engaged in
10 age discriminatory practices with the full knowledge that in so
11 doing it was discriminating against its older couriers, without
12 regard for the rights of those couriers under the ADEA.

13 192. Defendant had a mixed motive for its adverse employment
14 actions against some or all of the plaintiff class members. It
15 would not have taken the adverse actions against the class but for
16 its unlawful age discriminatory policies and patterns.

17 193. Defendant has followed the age discriminatory
18 employment practices described above and has shown reckless
19 disregard for the rights of its couriers under the ADEA and under
20 relevant provisions of state laws prohibiting age discrimination
21 in employment.

22 194. Defendant has not asserted a reasonable factor other
23 than age as a justification for its age discriminatory practices.
24 Defendant has no bona fide occupational qualification or business
25 necessity to justify its discriminatory practices against its
26
27
28

1 older couriers.

2 195. The employment practices of Fed Ex harmed the
3 Plaintiffs listed in Appendix B because Fed Ex terminated them
4 from their employment with Fed Ex because of Fed Ex's unified
5 policy, plan or scheme of discrimination.

6 196. Plaintiffs are similarly situated when they have
7 similar jobs and conduct themselves similarly. All Plaintiffs in
8 Appendix A, B and C are similarly situated in all material
9 respects.

10 197. The Plaintiffs are Couriers, Ramp Transport Drivers
11 (RTD), Service Agents or Handlers. They perform similar tasks and
12 similar conduct.
13

14 Job	Evaluated by BP	Delivers Packgs.	Pulls from Belt
15 Courier	YES	YES	YES
16 RTD	YES	YES	YES
17 Handlers	YES	YES (can be couriers and handlers)	YES
18 Ops. Manager	YES	YES	YES
19 Service Agents	YES	No	YES

20 198. Defendant Fed Ex's employment practices harmed
21 Plaintiffs Boyd, Stewart, Perkins, Henning, Fuller, Horning and
22 Sarro because they accepted early retirements rather than
23 remaining employed with the Defendant Fed Ex until they were 62
24 years of age or older. Plaintiff Mackenzie was harmed by Fed Ex's
25 employment practices and accepted normal retirement rather than
26
27
28

1 maintaining full-time employment with Fed Ex.

2 199. Thirty-four Plaintiffs in Appendix B who are employed
3 by Fed Ex have been and are being harmed by the ongoing employment
4 practices of Fed Ex which threaten their employment and reduce or
5 threaten to reduce their employment income.

6 200. Plaintiffs and the class of similarly situated older
7 couriers, ramp transport drivers and service agents were all well-
8 qualified to perform their job responsibilities.

9 201. Defendant has followed the age discriminatory
10 employment practices described above and has shown reckless
11 disregard for the rights of its older couriers, ramp transport
12 drivers and service agents under the ADEA and under relevant
13 provisions of state laws prohibiting age discrimination in
14 employment.
15

16 202. Defendant has not asserted a reasonable factor other
17 than age as a justification for its age discriminatory practices.

18 203. Defendant will continue to harm members of the
19 plaintiff class unless this Court issues injunctive relief.

20 **CLAIM TWO**

21 **For Violation of Cal. Gov. Code § 12940**

22 **(On Behalf of the Class of California Residents)**

23 204. Plaintiffs reassert and reallege paragraphs 1 through
24 191, inclusive, and fully sets forth and incorporates said
25 paragraphs herein by reference.
26
27
28

1 205. Section 12940 of California's Government Code makes it
2 unlawful:

3 206. For an employer, because of the . . . age . . . of
4 any person . . . to discharge the person from employment . . . or
5 to discriminate against the person in compensation or in terms,
6 conditions, or privileges of employment.

7 207. There are thousands of couriers, ramp transport drivers
8 and service agents employed by Defendant in the state of
9 California. On information and belief, at least 500 of these
10 couriers, ramp transport drivers and service agents are age 44 or
11 older.
12

13 208. The practices alleged in paragraphs 1 through 191 are
14 unlawful under California's Fair Employment and Housing laws, Cal.
15 Gov. Code § 12940. Plaintiffs Hulac, Fingarson, Spinks, Stewart
16 and Fejardo are all over age 44 and seek to represent the class of
17 couriers over 44 years of age who work in California.

18 209. Plaintiff Fingarson has exhausted the administrative
19 charge filing requirements of California's Fair Employment and
20 Housing laws.

21 210. The claims of Plaintiffs Hulac, Fingarson, Spinks,
22 Stewart and Fejardo and of other older couriers, ramp transport
23 drivers and service agents share common questions of fact and law,
24 including whether Defendant intentionally engaged in a pattern or
25 practice of age discrimination against its older couriers, ramp
26 transport drivers and service agents by implementing company-wide
27

1 employment practices intended to and did result in driving older
2 couriers, ramp transport drivers and service agents out of their
3 employment; and whether Defendant engaged in policies and
4 practices that discriminated against couriers, ramp transport
5 drivers and service agents over age 40 that were not required by
6 or consistent with business necessity.

7 211. The claims of Plaintiffs Hulac, Fingarson, Fejardo,
8 Stewart and Spinks are typical of the age discrimination claims of
9 the class they seek to represent. Plaintiffs are current couriers
10 who have been harassed and discriminated against in the terms and
11 conditions of their employment. Plaintiffs all claim that
12 Defendant intentionally engaged in a pattern or practice of age
13 discrimination against older couriers, ramp transport drivers and
14 service agents by implementing company-wide plans that were
15 intended to and did drive older couriers, ramp transport drivers
16 and service agents out of the company disproportionately. The
17 factual issues concerning liability under the state law claim are
18 identical or similar to the issues concerning liability under the
19 ADEA.
20

21 212. Plaintiffs are adequate representatives of the class
22 they seek to represent because they are not and have never been
23 supervisors or members of management. There are no conflicts of
24 interest between them and the class they seek to represent. In
25 addition, Plaintiffs have retained experienced counsel with a
26 multi-state practice in age discrimination matters, collective
27

1 actions, and other employment discrimination matters.

2 213. The actions taken against Plaintiffs and other older
3 couriers, ramp transport drivers and service agents constitute
4 discrimination under Cal. Gov. Code § 12940.

5 214. As a direct and proximate result of Defendant's
6 deliberate, intentional, and unlawful violation of Plaintiffs'
7 statutory rights, Defendants wrongfully caused Plaintiffs and
8 other older couriers, ramp transport drivers and service agents to
9 lose income and benefits and suffer humiliation and personal
10 embarrassment.

11 215. The acts committed by Defendant were committed with
12 oppression, fraud, and malice and resulted in emotional distress
13 to Plaintiffs and other older couriers, ramp transport drivers and
14 service agents.

15 216. Defendant has not asserted a reasonable factor other
16 than age as a justification for its age discriminatory practices.
17 Defendant has no bona fide occupational qualification or business
18 necessity to justify the discrimination against its older
19 couriers, ramp transport drivers and service agents.

20 217. Plaintiffs have been harmed by defendant's unlawful age
21 discrimination practices as alleged herein.

22 218. Defendant will continue its unlawful age discrimination
23 practices unless enjoined by an order of this Court.
24
25
26
27
28

CLAIM THREE

FOR VIOLATION OF ERISA 510

219. Plaintiffs incorporate the allegations of paragraphs 1-191 as fully set forth herein.

220. Defendant is an employer within the meaning of ERISA.

221. Plaintiffs and other members of the ERISA class are or have been eligible to participate in qualified employee benefit plans sponsored by defendant and accorded tax advantaged treatment under ERISA.

222. Defendant has taken adverse employment actions against plaintiffs and other members of the ERISA class.

223. Defendant has taken the adverse employment actions for the purpose of interfering with plaintiffs' ability to obtain benefits under ERISA plans that it has sponsored and/or because plaintiffs were eligible for benefits under such plans and/or for other reasons that are unlawful under 29 U.S.C. 1140.

224. Defendant has taken adverse employment actions for mixed motives, including the purpose of interfering with plaintiffs' ability to obtain benefits under ERISA plans that it has sponsored and/or because plaintiffs were eligible for benefits under such plans and/or for other reasons that are unlawful under 29 U.S.C. 1140.

225. Defendant would not have taken such adverse employment actions if not for its motive that was unlawful under 29 U.S.C. 1140.

1 226. Plaintiffs have suffered harm by reason of defendant's
2 conduct undertaken in violation of 29 U.S.C. 1140.

3 227. Defendant will continue to take actions prohibited by
4 29 U.S.C. 1140 unless enjoined by order of this Court.

5 228. Plaintiffs specifically limit their prayer for relief
6 for violation of 29 U.S.C. 1140 to such equitable remedies as are
7 available under ERISA, including, but not limited to reinstatement
8 and an award of costs and attorneys' fees.

9
10 **PRAYER FOR RELIEF**

11 Plaintiffs pray for orders requiring the Defendant to notify,
12 in a form to be approved by the Court, all current and former
13 couriers, ramp transport drivers and service agents 40 and over
14 with 10 or more years of experience and who had reached the age of
15 40 before their employment with Federal Express was terminated, of
16 the allegations in this lawsuit and the right to participate in
17 this suit; and

18 Plaintiffs pray for an Order directing the issuance of Notice
19 under the ADEA to couriers, ramp transport drivers and service
20 agents who are age 44 and older of the allegations of age
21 discrimination made with this suit and their right to Opt into
22 this suit; a class certification of Fed Ex employees employed in
23 California; and

24 Plaintiffs pray for an order preliminarily and permanently
25 enjoining Defendant and its officers, agents, employees,
26 successors and all persons from engaging in employment practices
27

1 that discriminate against older couriers, ramp transport drivers
2 and service agents on grounds of age, and from following neutral
3 employment practices that have a discriminatory impact against
4 older couriers, ramp transport drivers and service agents, unless
5 the employer can show that such practices are based upon a
6 "reasonable factor other than age" within the meaning of the ADEA.

7 Such an order should enjoin the Defendant from:

- 8 1) treating older couriers, ramp transport drivers and
9 service agents less favorably than younger couriers in the
10 allocation of routes, start times, overtime opportunities,
11 discipline and other terms and conditions of employment;
- 12 2) terminating or disciplining older couriers, ramp transport
13 drivers and service agents who are absent from work because
14 of injuries or other medical problems while they are
15 recovering from same, in the absence of solid medical
16 evidence that they are disabled from performing the duties of
17 a courier, ramp transport drivers or service agents;
- 18 3) treating older couriers, ramp transport drivers and
19 service agents less favorably than younger couriers, ramp
20 transport drivers and service agents in discipline and other
21 terms and conditions of employment;
- 22 4) following employment practices such as BPP and Stops-per-
23 hour, issuing "Counselings" and other practices that have a
24 discriminatory impact against older couriers, ramp transport
25 drivers and service agents unless this Court determines that
26
27
28

1 any such practice is based upon a reasonable factor other
2 than age;

3 5) failing or refusing to reinstate older couriers, ramp
4 transport drivers and service agents whose employment was
5 terminated by Defendant because of their age or because of
6 unlawful practices by Defendant which resulted in their
7 separation from employment by Defendant not based upon a
8 factor other than age;

9 6) retaliating against any couriers, ramp transport drivers
10 and service agents who have opposed any discriminatory
11 policies or practices, or who have made a charge, testified,
12 assisted, or participated in any manner in an investigation,
13 proceeding, or litigation.

14
15 Plaintiffs further pray for an award of damages to them and
16 plaintiffs who Opt into this suit for:

17 1) loss of income and the value of fringe benefits as
18 determined by the jury; including the loss of future earnings
19 for those couriers, ramp transport drivers and service agents
20 who have lost their positions with Defendant until such time
21 as they are reinstated or offered reinstatement;

22 2) an award of liquidated damages as determined by the jury;

23 3) an award of punitive damages for violations of FEHA as
24 determined by the jury;

25 4) an award of compensatory damages for violations of FEHA as
26 determined by the jury;
27

- 1 5) pre-judgment interest in an amount to be determined;
- 2 6) costs of litigation, including expenses and attorneys'
- 3 fees and expert witness fees; and
- 4 7) such other relief as may be just.

5 **DEMAND FOR JURY TRIAL**

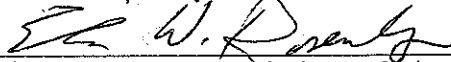
6 Plaintiffs hereby demand a jury trial as provided by Rule
7 38(a) of the Federal Rules of Civil Procedure.
8

9 DATED: May 21, 2008

ROSE & ROSE, P.C.

10 Respectfully submitted,

11 

12 

David L. Rose (admitted in N.D.Cal.)

Joshua N. Rose

Earlene W. Rosenberg

Attorneys for PLAINTIFFS

APPENDIX A**No Longer Employed With FedEx**

	Name	Station	Date of Birth
1.	Fred Hulac	STSA (CA)	3/27/52
2.	Tracy Gray	STSA (CA)	6/19/63
3.	David Williams	(CA)	9/17/50
4.	Glendora Spinks	POCA (CA)	3/18/53
5.	Raul Armendariz	FLGA (AZ)	10/19/56
6.	Lori Bernstein	FNLA (CO)	7/21/61
7.	Delno Clark	BDLA (CN)	3/4/59
8.	Stephen Megru	SUAA (FL)	2/11/59
9.	John Pellegren	FMYA (FL)	12/21/53
10.	Peggy Whitman	FMYA (FL)	4/22/61
11.	Sue Elins	FMYA (FL)	6/4/60
12.	Romas Jasiulevicius	CLWA (FL)	4/10/62
13.	Jerome Vanderable	NCQA (TN)	6/25/57
14.	Rian Takeshita	JHMDA (HI)	9/15/62
15.	Sherrie Smith	OGGA (HI)	12/14/53
16.	Edward Medeiros	OGGA (HI)	12/4/55
17.	Steven Sutterman	Cedar Rapids (IA)	8/2/57
18.	Jeffrey Long	GAIA (MD)	10/1/62
19.	Samuel Kudjordi	GAIA (MD)	8/10/53
20.	Sammy Smith	GAIA (MD)	3/4/60
21.	Lani Gibbons	FMEA (MD)	5/31/53
22.	Peter Fay	AYE (MA)	1/28/55
23.	Michael Kelley	OWDA (MA)	12/26/56
24.	John Neil	OWDA (MA)	2/23/57
25.	Kenneth Kumm	CEFA (MA)	8/7/56
26.	Lizzie Middlebrook	DTTA (MI)	3/10/54
27.	Deborah Ridenhour	DTTA (MI)	5/1/48
28.	Caroline O'Brien	MKCA (OH)	2/28/62
29.	Larry Mungiello	TEBA (NJ)	6/13/41
30.	Steven Goldberg	ABQA (NM)	8/16/50
31.	Maggie Dean	HTOA (NY)	9/13/59
32.	Sandra Compton	HKYA (NC)	11/11/48
33.	Michael Dill	HKYA (NC)	9/20/61
34.	Shryl Weideman	TOL (OH)	7/1/59
35.	Ronald Adams	DAYA (OH)	1/15/57
36.	William Watkins, III	PITA (OK)	8/4/47
37.	Edward Jones	TULA (OK)	12/4/54
38.	Jeff McEllrath	PDXA (OK)	1/10/54
39.	Belinda Ryles	PDXA (OR)	4/13/57
40.	Michael Parks	BNAA (OR)	7/15/58
41.	Earl Yarborough	NQAA (TN)	12/30/63
42.	Verna Stanback	NQAA (TN)	11/22/53
43.	Kenneth Adams	NQAA (TN)	10/2/56

44.	Esther Harrison	HKA (TN)	10/26/57
45.	Sandra Mason	HBVA (TX)	9/16/55
46.	Ricki Stilwell	WALA (GA)	12/20/54
47.	Kevin Chapman	DCAA (DC)	9/8/62
48.	Robert Willette	ATWA (WI)	8/23/61
49.	Rocco Notarfrancesco	GMVA (NJ)	3/19/57
50.	William Stewart	STSA (CA)	3/27/52
51.	Linnea Edwards	SRU (CA)	9/9/56
52.	Richard Boyd	SWFA (FL)	11/16/48
53.	Frank Sarro	BMLA (FL)	3/10/43
54.	Curley Fuller	PDXA (FL)	10/6/43
55.	Paul Horning	GAIA (MD)	3/21/50
56.	Rita Perkins	FCMA (MI)	11/29/51
57.	D. Ken Mackenzie	WRIA (NJ)	10/8/39
58.	David Henning	WWDA (NJ)	8/11/52

APPENDIX B**CURRENTLY EMPLOYED EXPERIENCING
ONGOING DISCRIMINATION**

Name	Station(State)	Date of Birth
1. Kathy Fingarson	NOTA (CA)	10/31/53
2. Dianna Fejardo	POCA (CA)	10/6/52
3. Debra Ferrell	POCA (CA)	2/23/56
4. Rebecca Diaz	POCA (CA)	7/7/58
5. Scott Maeda	POCA (CA)	3/17/65
6. Debbie Johnson	FULA (CA)	3/20/59
7. Denver Kushihashi	BKFA (FL)	7/31/63
8. Maria Pleigo	COIA (FL)	10/25/47
9. Naja Welch	MLBA (FL)	7/8/66
10. Estate of Dwight Todd	SPIA (HI)	6/27/53
11. Victor Lanzotti	SPIA (IL)	3/5/47
12. Bonnie Boston	SPIA (IL)	10/2/54
13. Barry Barnette	MZZA (OH)	8/3/60
14. Elizabeth Tucker	MZZA (OH)	8/12/54
15. Richard Casey	BLMA (NJ)	3/1/61
16. John Osowski	BLMA (NJ)	1/1/58
17. Dennis DeNeeza	BLMA (NJ)	8/16/51
18. Richard Glock	BLMA (NJ)	2/20/54
19. Michael Addeo	BLMA (NJ)	5/11/53
20. Francis Phair	BLMA (NJ)	3/3/59
21. Donald Meyer	BLMA (NJ)	8/5/63
22. Frank Sarro	BMLA (NJ)	3/10/43
23. David Velenger	PRIA (NJ)	12/14/58
24. Robert Chabak	WWDA (NJ)	5/10/60
25. Mike Bruno	WWDA (NJ)	3/23/53
26. Michael Breitstein	DAYA (OH)	8/10/62
27. Ellen Brouse	MRIA (OR)	7/26/50
28. Zeno Latin	VGTA (OR)	7/17/57
29. Cedric Roane	USCA (SC)	11/17/51
30. Sarah Dancer	MMR (TX)	12/13/53
31. Tom Schulz	ATWA (WI)	12/7/51
32. Wilma Gorgee	TULA (OK)	9/2/51
33. Eddie Gonzales	ALBA (NY)	7/3/54
34. Kelly Basham	MSCA (AZ)	6/27/48
35. Rick Evans	MSCA (AZ)	1953
36. Joshua Wiley	MQYA (TN)	4/30/51
37. Emma Dallegos	POCA (CA)	3/15/61
38. Greg McCoy	PDXA (OR)	1/1/54

APPENDIX C

CALIFORNIA RESIDENTS

	Name	Station	DOB
1.	Fred Hulac	STSA (CA)	3/27/52
2.	Tracy Gray	STSA (CA)	1/27/08
3.	Glendora Spinks	POCA (CA)	3/18/53
4.	Lani Gibbons	FMEA (CA)	5/31/53
5.	Kathy Fingarson	NOTA (CA)	10/31/53
6.	Dianna Fejardo	POCA (CA)	10/6/52
7.	Debra Ferrell	POCA (CA)	2/23/56
8.	Rebecca Diaz	POCA (CA)	7/7/58
9.	Scott Maeda	POCA (CA)	3/17/65
10.	Linnea Edwards	SRU (CA)	9/9/56
11.	Debbie Johnson	FULA (CA)	3/20/59
12.	William Stewart	STSA (CA)	3/27/52